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LA327-006329297-0002
MCC / hlf

MICHAEL BOSWELL, an Incapacitated Person by his Guardian Ad Litem, ETHEL BOSWELL and ETHEL BOSWELL, Individually, Plaintiffs, -vs- STEVE W. EOON, KIRSTEN M. BYRNES, CHRISTINA EICKMAN PTL. JAMES FEISTER, NEW BRUNSWICK POLICE DEPARTMENT, CITY OF NEW BRUNSWICK and JOHN DOES (#1 thru #5), Defendants.	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY CASE NO. 3:08-cv-05098-GEB-JJH **Civil Action** **ANSWER TO FIRST AMENDED COMPLAINT, AFFIRMATIVE DEFENSES AND JURY DEMAND**

Defendant, Steve W. Eoon, residing at 69-71 W. Main Street, Apt. 2, Somerville, NJ 08876, by way of Answer to the First Amended Complaint, says:

AS TO THE FIRST COUNT

1. There is insufficient information by which paragraph one can be admitted or denied at this time.

2. Paragraph two is admitted.

3. No response is made to the allegations in paragraph three as they do not apply to this defendant.

4. No response is made to the allegations in paragraph four as they do not apply to this defendant.

5. No response is made to the allegations in paragraph five as they do not apply to this defendant.

6. Paragraph six is denied.

7. Paragraph seven is denied.

AS TO THE SECOND COUNT

1. The answer to the preceding Count is repeated.

2. No response is made to the allegations in paragraph two as they do not apply to this defendant.

3. No response is made to the allegations in paragraph three as they do not apply to this defendant.

4. No response is made to the allegations in paragraph four as they do not apply to this defendant.

5. No response is made to the allegations in paragraph five as they do not apply to this defendant.

6. No response is made to the allegations in paragraph six as they do not apply to this defendant.

7. No response is made to the allegations in paragraph seven as they do not apply to this defendant.

8. No response is made to the allegations in paragraph eight as they do not apply to this defendant.

9. No response is made to the allegations in paragraph nine as they do not apply to this defendant.

10. No response is made to the allegations in paragraph ten as they do not apply to this defendant.

11. No response is made to the allegations in paragraph eleven as they do not apply to this defendant.

12. No response is made to the allegations in paragraph twelve as they do not apply to this defendant.

13. No response is made to the allegations in paragraph thirteen as they do not apply to this defendant.

14. No response is made to the allegations in paragraph fourteen as they do not apply to this defendant.

AS TO THE THIRD COUNT

1. The answers to the preceding Counts are repeated.

2. There is insufficient information by which paragraph two can be admitted or denied at this time.

3. No response is made to the allegations in paragraph three as they do not apply to this defendant.

4. No response is made to the allegations in paragraph four as they do not apply to this defendant.

5. No response is made to the allegations in paragraph five as they do not apply to this defendant.

6. No response is made to the allegations in paragraph six as they do not apply to this defendant.

7. No response is made to the allegations in paragraph seven as they do not apply to this defendant.

AS TO THE FOURTH COUNT

1. The answers to the preceding Counts are repeated.

2. No response is made to the allegations in paragraph two as they do not apply to this defendant.

3. No response is made to the allegations in paragraph three as they do not apply to this defendant.

4. No response is made to the allegations in paragraph four as they do not apply to this defendant.

5. No response is made to the allegations in paragraph five as they do not apply to this defendant.

6. No response is made to the allegations in paragraph six as they do not apply to this defendant.

FIRST AFFIRMATIVE DEFENSE

Any claims against defendant are barred or diminished by contributory or comparative negligence of plaintiff for which negligence the recovery, if any, should be barred or mitigated in accordance with the provisions of N.J.S.A. 2A:15-5.1, et. seq.

SECOND AFFIRMATIVE DEFENSE

The plaintiff so acted at the time an place alleged as to assume the risks of his conduct.

THIRD AFFIRMATIVE DEFENSE

The accident, injuries and damages were caused or contributed to by the plaintiff who failed to mitigate and guard against aggravation of any injuries sustained on the date in question.

FOURTH AFFIRMATIVE DEFENSE

The cause of action as alleged is barred by the provisions of the Statute of Limitations to wit, N.J.S.A. 2A:14-1, et seq.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the entire controversy doctrine.

SIXTH AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of res judicata and/or collateral estoppel.

EIGHTH AFFIRMATIVE DEFENSE

Any injuries or damages which form the basis of this Complaint were the direct result of the acts, omissions and/or negligence of other person, parties and/or entities over whom this defendant had no control or authority.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the Worker's Compensation Law, N.J.S.A. 34:15-1, et seq. which is inclusive of N.J.S.A. 34:15-8.

TENTH AFFIRMATIVE DEFENSE

Defendant neither owed nor breached any duty to plaintiff based upon status at the time of the incident which a cause of action or compensation be awarded.

ELEVENTH AFFIRMATIVE DEFENSE

Any claim for punitive damages is without basis in law or fact.

TWELFTH AFFIRMATIVE DEFENSE

Pursuant to R. 1:4-8 and N.J.S.A. 2A:15-59.1, defendant puts the plaintiff on notice that he believes the above-mentioned Complaint is frivolous in that it is without any reasonable basis in law or equity and cannot be supported by a good faith argument for an extension, modification or reversal of existing law and, if the action continues to be pursued by the plaintiff, that this defendant will bring the appropriate motion to request payment of all reasonable litigation costs and attorney fees.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff received and accepted payment of monies in full and/or partial satisfaction and/or have provided releasing documentation for claims arising out of the incident complained of and of damages resulting therefrom, for which credit is hereby claimed or dismissal is sort.

FOURTEENTH AFFIRMATIVE DEFENSE

The defendant has been released from liability for the damages alleged.

FIFTEENTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred by the provisions of N.J.S.A. 2A:14-1.1, the 10 year statute of repose.

SIXTEENTH AFFIRMATIVE DEFENSE

The accident, injuries and damages alleged were caused or contributed to by the negligence of plaintiff in that he was intoxicated and otherwise impaired by alcohol.

CROSS-CLAIM FOR CONTRIBUTION

While denying any liability for damages to plaintiffs, if this defendant should be adjudged liable to the plaintiffs, this defendant asserts that co-defendants Kirsten Byrnes, Christina Eickman, Ptl. James Feister, New Brunswick Police Department, City of New Brunswick and John Does (#1 thru #5), are joint tortfeasors and therefore, this defendant demands contribution pursuant to the Joint Tortfeasor's Contribution Law, N.J.S.A. 2A:53A-1 et seq., the Comparative Negligence Statute, N.J.S.A. 2A:15-5.1 and R. 4:7-5.

DEMAND FOR JURY TRIAL

Demand is hereby made for a trial by jury.

REQUEST FOR STATEMENT OF THE AMOUNT OF DAMAGES CLAIMED

Request is hereby made for a statement of the amount of damages claimed to be served within 5 days of the receipt of this Answer, in accordance with R. 4:5-2.

NOTICE OF OTHER ACTIONS

The Undersigned hereby certifies that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding and that no other action or arbitration proceeding is contemplated.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Mario C. Colitti, Esq., is hereby designated as trial counsel for the defendant, Steve W. Eoon.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Answer was served within the time prescribed by Rule 4:6-1.

LAW OFFICES OF SHERMAN & VISCOMI
Attorneys for Defendant, Steve W. Eoon

BY: ______________________
Mario C. Colitti

Dated: February 12, 2009